

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARRYL NEWMAN, :
Petitioner, : CIVIL ACTION NO. 20-222
v. :
ERIC TICE; THE DISTRICT ATTORNEY :
OF THE COUNTY OF PHILADELPHIA; :
and THE ATTORNEY GENERAL OF THE :
STATE OF PENNSYLVANIA, :
Respondents. :

ORDER

AND NOW, this 29th day of October, 2020, after considering (1) the petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by the *pro se* petitioner, Darryl Newman (“Newman”) (Doc. No. 1), (2) Newman’s request for a stay and abeyance (Doc. No. 4), (3) Newman’s memorandum of law in support of his habeas petition (Doc. No. 11), (4) the respondents’ response to the motion to stay and abey (Doc. No. 15), and (5) the report and recommendation by United States Magistrate Judge Timothy R. Rice (Doc. No. 17); and no party having filed objections to the report and recommendation; accordingly, it is hereby **ORDERED** as follows:

1. The Honorable Timothy R. Rice’s report and recommendation (Doc. No. 17) is **APPROVED** and **ADOPTED**;¹

¹ Since neither party filed objections to Judge Rice’s report and recommendation, the court need not review the report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). Nonetheless, “the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report.” *Id.* As such, the court will review the report for plain error. See *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (“In the absence of a timely objection, . . . this Court will review [the magistrate judge’s] Report and Recommendation for clear error.” (internal quotation marks omitted)). The court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The court has reviewed Judge Rice’s report for plain error and has found none.

2. Newman's motion requesting that the court stay and hold this habeas case in abeyance until his pending state court proceedings are resolved (Doc. No. 4) is **GRANTED**;

3. Newman shall return to court within **thirty (30) days** of the conclusion of his state court proceedings. If Newman does not return to federal court within that time, the court will vacate this order staying and abeying this action and will deny Newman's habeas petition without prejudice; and

4. There is no probable cause to issue a certificate of appealability.

BY THE COURT:

/s/ *Edward G. Smith*
EDWARD G. SMITH, J.